



CITY COUNCIL STAFF REPORT

MEETING DATE: May 5, 2004

RECWARE CONTRACT ADDENDUM FOR AQUATICS CENTER

RECOMMENDED ACTION(S):

Authorize the City Manager to Execute an addendum to the existing RecWare Software contract in the amount of \$20,000.00.

EXECUTIVE SUMMARY:

Staff has completed training with RecWare to incorporate their program and software for registration and reservation processes at the Community and Cultural Center. Recreation and Aquatics staff were involved in the training as the software system is being incorporated at both sites so that we have an integrated system at both locations and eventually at the Indoor Recreation Center. This will enable our community participants to register for any class offerings at either location.

The Aquatics Center staff were also introduced to components that would enhance the operational use of the software at the Aquatics Center, specifically with point of sales processes. After thorough research staff has concluded that these components would complement the existing services we have purchased and increase the productivity of staff utilizing the point of sale component which is needed for the concession operations.

I am requesting that the contract with RecWare be amended to include the enhanced components for the Aquatics Center. Attached is the contract. This expenditure will be covered under the FFE budget.

FISCAL IMPACT: The \$20,000 addendum is covered under the CIP-FFE budget account number #317-86220-8055-115000. The revised total for the contract will be \$45,000.

Agenda Item #1

Prepared By:

Manager, Recreation & Community Services

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: May 5, 2004

APPROVE PURCHASE ORDERS FOR THE FURNISHINGS, FIXTURES AND EQUIPMENT (FF&E) FOR POLICE FACILITY AT 16200 VINEYARD BLVD.

RECOMMENDED ACTION(S):

1) Authorize the City Manager to approve a Purchase Order in the amount of \$179,625.00 with Pivot Interiors for Furnishings, Fixtures and Equipment (FF&E) at the new police facility.

Agenda Item # 2

Prepared By:

Lt. Terrie Booten

Approved By:

Chief of Police

Submitted By:

City Manager

EXECUTIVE SUMMARY: As we are nearing completion of the police facility construction, it is necessary that we order the FF&E for the building. The \$179,625.00 furniture acquisition includes sales tax, delivery and installation by Pivot Interiors.

In February '04, staff requested proposals from three furniture designers as design consultants. Pivot Interiors had the lowest proposal. In mid-March, Pivot Interiors began their furnishings design. The layout and proposal was presented to the Police Department committee. As the finalization of choices have been made, it is now important to submit the order as soon as practical. Due to the time constraints of ordering the furniture and installation to meet our opening day requires us to authorize Pivot Interiors to purchase the furniture. The order must be placed by May 6, 2004 so that we have sufficient time for delivery of the furniture before the opening celebration in late June.

The quality of the furniture is equivalent to the recently purchased furniture for the Community Cultural Center and the Aquatics Center. The furniture comes with a 12 year parts and workmanship guarantee.

FISCAL IMPACT: Funding exists in the current year budget under CIP #346-Furnishings, Fixtures and Equipment. No additional funding is required at this time.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 5, 2004

APPROVE PURCHASE AND INSTALLATION OF THE COMMUNICATION TOWER FOR POLICE FACILITY AT 16200 VINEYARD BLVD.

RECOMMENDED ACTION(S):

Authorize the City Manager to approve a Purchase Order in the amount of \$47,774.00 to L.D. Strobel Co. for the installation of the Police Department Communication Tower from the FF&E funds of the new police facility.

EXECUTIVE SUMMARY:

In July 2003 the Council awarded a building located at 16200 Vineyard Boulevard as the future Morgan Hill Police Department. The Council approved the purchase price and the estimated FF&E to complete the project. As the final construction phase is nearing completion for the tenant improvements, the fabrication and installation of the communication tower needs to be completed.

The Police Department with assistance from County Communications reviewed proposals from three vendors. Based on past vendor experience and low bid, staff recommends the proposal submitted by L.D. Strobel Co. The three bids were as follows:

L.D. Strobel Co.	\$ 47,774.00
Tower Structures Inc.	\$ 80,100.00
S2M Tower and Network Services	\$ 117,659.14

The Police Communications Tower supports essential radio capabilities for Police Department and the City Office of Emergency Services.

FISCAL IMPACT:

The funds for the communication tower are in the Police Facility FF&E budget (346-86450-8049-228000).

Agenda Item # 3

Prepared By:

(Police Lieutenant)

Approved By:

(Interim Chief of Police)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: MAY 5, 2004

BI-ANNUAL VACANCY RATE SURVEY

RECOMMENDED ACTION(S): Establish the bi-annual vacancy rate for April 2004 as recommended by the Planning Commission.

EXECUTIVE SUMMARY: According to the Morgan Hill Municipal Code, Chapter 17.36 relating to Condominium Conversions, the apartment vacancy rate shall be established in April and October of each year on the basis of a representative sampling of apartment buildings. The vacancy rate survey must be reported to both the Planning Commission and the City Council.

The most recent multi-family housing estimates from the State Department of Finance indicate a total of 1,754 multi-family units. Survey results account for over 50% of all such units; senior housing units are not included in the sampling but are included as supplemental information. Also, for general information purposes, included is a brief summary of current rent rates as compared to rent rates reported six months ago.

The survey has been completed and is attached. On April 13, 2004, the Planning Commission accepted the survey results which established the vacancy rate for April 2004 at 5.35%. It is recommended that the Council accept the Planning Commission's survey findings.

FISCAL IMPACT: N/A

Agenda Item # 4

Prepared By:

Municipal Services Assist.

Approved By:

BAHS Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: May 5, 2004

Agenda Item # 5

Prepared By:

Asst. to the City Mgr.

Submitted By:

City Manager

2003-04 CITY WORKPLAN, THIRD QUARTER UPDATE

RECOMMENDED ACTION:

Accept Third Quarter Update of the 2003-04 Workplan

EXECUTIVE SUMMARY:

On July 23, 2003, the Council adopted the 2003-04 City Workplan. The attached report shows the status of each of the 82 projects in the workplan. Workplan projects are non-routine activities that represent major departmental efforts.

When developing the workplan, departments estimate the time required to attain project milestones. These estimates may not be met for a variety of reasons including reduced staffing, time delays when coordinating with outside entities, and the addition of higher-priority activities over the course of the year. At this time, 55% of all workplan projects are projected to be completed on time or ahead of schedule, 33% of the projects are expected to be completed late, and 12% of the projects are on hold.

Of the projects that will be completed later than the adopted schedule, the following projects will not be completed until FY 2004/05:

- Move Acton Museum and Farmhouse
- Survey of Below Market Rate Housing Program Participants
- Police Station Request for Proposal Process
- Granary Project
- Economic Development Strategy
- Economic Development Audit
- Implementation of Facilities Management Study Recommendations
- Completion of the Monterey Road Traffic Study and Improvement Plan
- Completion of the Urban Limit Line Study
- Amendment of the General Plan and Zoning for the Downtown Area
- Implementation of Changes to the Residential Development Control System
- Update Cultural Resources Preservation Ordinance and Designate Historic Sites and Buildings
- Construction of the Boys Ranch Reservoir

In addition, these projects have been put on hold or postponed until FY 2004/05:

- Assistance to Sinaloa Restaurant
- Development of a Leadership Forum for Council Committees, Commissions and Task Forces
- Surveys of Finance and Planning Customers
- Planning for Eight-Lane Highway 101 Configuration
- A Comprehensive Physical Inventory of Fixed Assets
- The Development of Service Learning Programs in Conjunction with Live Oak High School

FISCAL IMPACT:

No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: MAY 5, 2004

Agenda Item # 6

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1673, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 18.76.020(56.5) (Definitions – Tobacco Advertising Sign) AND AMENDING SECTION 18.76.250 (Commercial and Industrial Zone Signs – Window Signs) OF CHAPTER 18.76 (Sign Code) OF TITLE 18 (Zoning) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF TOBACCO ADVERTISING SIGNS

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1673, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On April 21, 2004, the City Council Introduced Ordinance No. 1673, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1673, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 18.76.020(56.5) (Definitions – Tobacco Advertising Sign) AND AMENDING SECTION 18.76.250 (Commercial and Industrial Zone Signs – Window Signs) OF CHAPTER 18.76 (Sign Code) OF TITLE 18 (Zoning) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF TOBACCO ADVERTISING SIGNS

WHEREAS, state law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Penal Code § 308); and

WHEREAS, state law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business & Professions Code § 22956) and provides procedures for using persons under 18 years of age to conduct onsite compliance checks of tobacco retailers (Business & Professions Code § 22952); and

WHEREAS, state law prohibits the sale or display of cigarettes through a self-service display, but explicitly provides that broader local requirements may be enacted (Business & Professions Code § 22962); and

WHEREAS, despite these and other state and local laws related to tobacco, minors continue to obtain tobacco products at alarming rates. Each year, an estimated 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry an estimated \$480 million in profits from underage smokers;¹ and

WHEREAS, in a 2001 California youth buying survey, 17.1 of retailers surveyed sold tobacco product to minors;² and

WHEREAS, it is estimated that 7.1% of children in California smoke³ and,

¹ Joseph R. DiFranza, M.D. & John J. Librett, M.P.H., *State and Federal Revenues from Tobacco Consumed by Minors*, 89 Am. J. Pub. Health 1106 (1999).

² Cal. Dep't Health Servs, Tobacco Control Section, *Youth Tobacco Purchase Survey 2001* (forthcoming 2002) (upon release, survey results are expected to be available at <http://www.dhs.ca.gov/tobacco/html/pressreleases.htm>). Note that the youth sale rate cited above is a statewide average. Youth sales rates for a particular city or county may be significantly higher. Check with your local tobacco prevention project, usually located in the county Health Department, to see if local figures are available.

³ Cal. Dep't of Health Servs., Tobacco Control Section, *Adult & Youth Smoking Prevalence 1994-2000* (2001), at <http://www.dhs.ca.gov/tobacco/documents/401graph.pdf> (last updated Jan. 9, 2001).

WHEREAS, it is estimated that 19.2% of ninth- to twelfth-grade boys use smokeless tobacco (snuff, plug, dipping tobacco, or chewing tobacco);⁴ and 73% of high school seniors who had ever tried smokeless tobacco did so by the ninth grade;⁵ and,

WHEREAS, it is estimated that 57% of 10th graders and 38% of 8th graders perceive that it would be easy for them to obtain cigarettes from a retail source;⁶ and,

WHEREAS, a strong predictor of adolescent experimentation with cigarettes is the perception that they are easily available;⁷ and,

WHEREAS, grocery retailers have reported that cigarettes are the most frequently stolen item;⁸ and,

WHEREAS, one survey reported that over 20% of middle school students and over 15% of high school students state that shoplifting is their primary means of obtaining smokeless tobacco;⁹ and,

WHEREAS, over 100 California local governments have passed an ordinance requiring the sale of tobacco products to be vendor-assisted;¹⁰ and,

WHEREAS, a survey of 268 Live Oak High School students performed on May 9, 2003, found that:

- 16.41% of students identified themselves as current smokers;
- 89.2% believed it was easy for minors under the age of 18 to obtain cigarettes or tobacco products in Morgan Hill; and

⁴ Laura Kann, PhD et al., *Results from the National School-Based 1991 Youth Risk Behavior Survey and Progress Toward Achieving Related Health Objectives for the Nation*, 108 (Supp. 1) Pub. Health Rep. 47, 51 (1993).

⁵ U.S. Dep't of Health & Hum. Servs. et al., *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* 101 (1994).

⁶ Cal. Dep't of Health Servs., Tobacco Control Section, *Independent Evaluation of the California Tobacco Control Prevention & Education Program: Wave 2 Data, 1998, Wave 1 & Wave 2 Data Comparisons 1996-1998* 76 (2001), available at <http://www.dhs.ca.gov/tobacco/documents/Wave2IEreport.pdf> (last updated Apr. 24, 2001).

⁷ Leslie A. Robinson et al., *Predictors of Risk for Different States of Adolescent Smoking in a Biracial Sample*, 65 J. of Consultative Clinical Psychol. 653, 657 (1997).

⁸ Rod Little, *Hottest Picks in Grocery Stores*, USA Today, Dec. 13, 1990, (USA Snapshots), available at <http://pqasb.pqarchiver.com/USAToday/> (last visited May 29, 2001).

⁹ Fla. Dept. of Health, *Florida Youth Tobacco Survey (1999), Highlights from Pilot Program Areas—at the end of year 1*, (June 10, 1999), available at http://www.doh.state.fl.us/disease_ctrl/epi/FYTS/vol2rep_2.pdf (last visited Feb. 28, 2002).

¹⁰ American Nonsmokers' Rights Foundation, *California Ordinances Restricting Youth Access to Tobacco*, (Dec. 13, 2001), available at <http://birch.he.net/~talc/PDFs/licordlst.pdf> (last visited Feb. 1, 2002).

- 82.8% knew minors who obtained tobacco products within the thirty (30) days prior to the survey

WHEREAS, the City Council of the City of Morgan Hill finds that restriction of advertising of tobacco products will assist in reducing the access by minors to tobacco products and other above-stated concerns.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

Section 1. Subsection 56.5 (Tobacco Advertising Sign) of Section 18.76.020 (Definitions) of Chapter 18.76 (Sign Code) of Title 18 (Zoning) is hereby added to read as follows:

18.76.020 Definitions.

... 56.5 “Tobacco Advertising Sign” means any of the following: a temporary or permanent sign (including, without limitation, the application of words and graphics to any medium) that is installed or painted on any medium or object for the purposes of advertising tobacco products, including but not limited to any substance containing tobacco leaf, such as cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or bidis.

Section 2. Subsection L (Window Signs) of Section 18.76.250 (Commercial and Industrial Zone Signs) of Chapter 18.76 (Sign Provisions) of Title 18 (Zoning) is hereby amended to read as follows:

18.76.250 Commercial and industrial zone signs.

L. Window signs. All permanent window signs *and tobacco advertising signs together* may not occupy more than twenty-five percent of the window area on which they are placed. Permanent window signs within a shopping center or building housing more than three businesses must be included in an approved uniform sign program. Window sign area shall be included in the total building aggregate sign area, as per subsection D or subsection G1 of this section.

Section 3. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 4. **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 21st Day of April 2004, and was finally adopted at a regular meeting of said Council on the 5th Day of May 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1673, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th Day of May 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



**AGENCY/CITY COUNCIL STAFF
REPORT
MEETING DATE: May 5, 2004**

**TITLE –AGREEMENT WITH THE LAW FIRM OF
ENDEMAN, LINCOLN, TUREK & HEATER**

RECOMMENDED ACTION:

Authorize the City Manager to execute an Agreement with the law firm of Endeman, Lincoln, Turek & Heater.

EXECUTIVE SUMMARY:

On June 29, 2000, the City retained the law firm of Endeman, Lincoln, Turek & Heater to defend the City of Morgan Hill and the City of Morgan Hill Rent Review Commission against an action filed by Hacienda Valley Mobile Estates. The matter is currently set for trial in the Santa Clara County Superior Court on October 4, 2004. To cover the fees and expenses associated with pretrial preparation, discovery and trial, staff is recommending that Council approve the attached Consultant Agreement in the amount of \$250,000.

FISCAL IMPACT:

Funds exist in the unappropriated Redevelopment Agency Funds to cover these expenses.

Agenda Item # 7

Prepared By:

(Title)

Approved By:

(Department Director)

Submitted By:

City Manager



CITY COUNCIL/RDA STAFF REPORT

MEETING DATE: May 5, 2004

APPROVAL OF COST SHARING AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT FOR LLAGAS CREEK FLOOD PROTECTION (PL 566) TECHNICAL STUDIES

Agenda Item # 8

Prepared By:

Deputy Director PW

Approved By:

Department Director

Submitted By:

City Manager

RECOMMENDED ACTION:

- 1) Approve appropriation of \$300,000 from current year unappropriated RDA fund balance for this project.
- 2) Authorize the City Manager, subject to City Attorney review and approval, to execute a Cost Sharing Agreement with the Santa Clara Valley Water District for the accomplishment of technical studies related to the design of the Llagas Creek Flood Protection project.

EXECUTIVE SUMMARY: The Llagas Creek Flood Protection project, otherwise known as Public Law 566 (PL 566) is a large storm drainage project intended to provide flood protection for Gilroy, San Martin, and Morgan Hill. The project was initiated in 1954 and approximately 60% of it is complete with the San Martin and Morgan Hill reaches still not finished. The U.S. Army Corps of Engineers (COE) was authorized under the Water Resources Development Act of 1999 to construct the final reaches of the project. The COE and the Santa Clara Valley Water District (District) are partnering under a Memorandum of Agreement to complete the project.

While progress has been made over the past few years on the property acquisition, environmental clearance, and design of the project reaches through Morgan Hill, funding has been severely curtailed at the federal level. The COE has notified the District that it will not have sufficient funding to maintain the environmental and design efforts which, if stopped, would halt all progress on the project. Staff has proposed to the District that a cost sharing arrangement be established to pay for the completion of certain key technical studies related to the environmental and design efforts to keep them moving forward. The technical studies include geotechnical investigation (\$500,000), tree survey (\$40,000), and hazardous materials investigation (\$60,000). The total amount for all studies considered in the proposed agreement is \$600,000. Staff recommends that the City contribute half of that amount, or \$300,000. Under the terms of the proposed agreement with the District the City's contribution would only be for efforts within the City's boundaries. The technical studies would be administered by the District and would be completed by consultants selected by the District.

The City and the District would enter into the agreement assuming that the ultimate responsibility for these studies remains with the COE and that at such time in the future if federal funds are restored, the City and District would be reimbursed. However, there will not be a guarantee of such reimbursement.

Staff feels that at this critical juncture of the project it is imperative to maintain the momentum of the environmental and design efforts and that the only feasible way of accomplishing that is by a cost sharing agreement with the District.

FISCAL IMPACT: The proposed agreement would obligate the City to pay a "not to exceed" amount of \$300,000. The agency earmarked a total \$3.4 million to alleviate local flooding when PL 566 is complete (CIP Project No. 417099). It is recommended that \$300,000 of those funds be encumbered now to maintain the PL 566 schedule.

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – APRIL 21, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 5:04 p.m.

ROLL CALL ATTENDANCE

Present: Mayor/Chairman Kennedy, Council/Agency Members Carr, Chang, Sellers, Tate

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Agency Secretary Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

Redevelopment Agency Action

WORKSHOP:

1. WALNUT GROVE PLANNED UNIT DEVELOPMENT (PUD) WORKSHOP

Business Assistance and Housing Manager Maskell presented the staff report as included in the Council agenda packet, and distributed copies of the power point presentation to be given during the workshop. Refer to the agenda packet staff report on file in the City Clerk's office to view copies of Options A, A1, B and C, as discussed hereafter.

Ms. Maskell stated that the property owners in the area have stated a preference for Options A and A1, and requested that the Council provide a prioritization of proposed site concepts, allowing staff the latitude to move forward with the next in line of priority if the original becomes unworkable.

She also stated that staff is looking for direction from Council on setting parameters for buffer areas and preliminary thoughts on possible design themes for the community area to be presented by the consultant.

Mark Sumpf of ROEL was present and introduced Mr. Rick Cartel of Autopilot Development Services, stating that Mr. Cartel has experience with over 250 auto dealerships and 25 auto malls.

Mr. Cartel stated that his intent would be to present the positive impacts on the city that such a development can provide. He proceeded with the PowerPoint presentation, which demonstrated both the negative and the positive types of design elements that can occur in such a development. He stated that for the PUD to be successful in attracting auto dealerships, it must allow a competitive environment

where buyers can easily view the cars for sale on display pads, but also keep the displays under control. Other aspects that need to be addressed are parking for buyers, uniformity of signage, storage areas for auto inventory, landscaping, and buffers between the dealerships and the abutting residential areas.

He briefly reviewed all four options as presented in the staff report, and pointed out the differences in layout, road configuration, utilization of various pieces of the property, traffic patterns, and buffering provided.

Mr. Cartel stated that Option C provides maximum flexibility and maximum utilization of the property from the viewpoint of dealership use. It also provides maximum frontage for display purposes and best circulation of traffic on the loop configuration of the private road within the property.

In response to a question by Council Member Tate, he explained that Option B contains a private drive alley that would allow display of automobiles. It also brings the buildings closer to the street rather than placing a large parking lot in front, creating more of a “village” atmosphere.

Vice-Chair Sellers stated he was pleased to see that there were flex sites included in the planning, and asked if the property to the north of the current Chevrolet dealership would have a use that would have a lower impact on the residential areas. He also asked why Mr. Cartel was promoting Option C, when Option A1 was liked by the property owners.

Mr. Cartel explained that the north location is planned for vehicle storage only, which would be a low impact use, with a sound wall to buffer the noise from both the dealership and the freeway for the residential area. Customers would not enter this area unless accompanied by a sales person. The location is very visible from the freeway, which adds great value for a dealership. Also, having a place to park inventory is key to selling cars. The flex sites located closer to Dunne would be ideal for another dealership, and the remaining site would be ideal for a transition use. He responded that he prefers Option C because he is looking for the option that maximizes the marketability to the automotive community at large. However, the other options would also work fine; and it is up to the community to decide what will work best for them.

Vice-Chair Sellers asked if the selection of Option A or B would impact the marketability of the site to dealerships and affect the ability to get them in sooner rather than later.

Mr. Cartel responded that we have a unique situation because there is more demand than supply. If a 100 acre auto site is being developed, you would want to include the best possible features to market it.

Chairman Kennedy stated that one of the objectives is to find what works for the neighbors. He would prefer to see a berm used in the landscape buffer so only landscaping is seen and not the wall.

Mr. Cartel stated that the landscape buffer area is 20 feet wide, with a 6 foot wide trail, and walls on both sides; with a screen wall and ornamental plantings to avoid a prison wall effect.

Chairman Kennedy opened the public comment.

Frank Derosé and his sister Denise Derosé introduced themselves as owners of the central parcel in the PUD, and stated their preference for Option A or A1, with highest preference for A because A1 is more ambitious. He stated that the views for those exiting the KFC and Chevron would be ideal with Option A; and that both Options A and A1 have easy access on Walnut Grove. Option B, however, has a much more difficult access and egress because traffic for the KFC and Chevron would go from a private road onto a public road and then onto a private road again. He suggested that the owners of the KFC and Chevron properties have their opinion solicited. He stated that they are also opposed to Option B because it would require them to dedicate and rebuild a road that they have already dedicated and built once for the current street. In summary, they like A and A1, but prefer A; and Oppose B and C, but feel more strongly about B than C.

John Anderson of Courtesy Chevrolet stated that he supports Option A1, and would use the property north of the dealership for storage only. He stated he would like to be able to use the entire block of property.

Chuck Dillman stated that his opposition is because of process issues. All the property being discussed is zoned as Residential in the General Plan, which was set up to consider needs. He is concerned that the Council is willing to throw that out. He stated his concern about the amount of money being spent on the development of this proposal during difficult budget times, and that he had not heard of any demand for this type of use. He stated that this does not seem to be a plan built on a firm foundation, and is contrary to the principle of the General Plan and the oft stated position of the Council on that issue.

No comments being offered, the public comment was closed.

Vice-Chair Sellers asked what the next steps would be and how the neighbors would be contacted for their input.

Ms. Maskell responded that there are meetings planned for May and June and that property owners would be notified.

She noted that she had received an e-mail from Mr. Randy Toch requesting Option A.

Agency Member Tate asked how this project compares with the General Plan and what would have to be changed. He requested an exhibit be prepared and Executive Director Tewes responded that he would direct staff to prepare such an exhibit for the Agency Board.

Agency Member Carr stated he had the same issue as Agency Member Tate. He also would like further information on the connection of Walnut Grove all the way from Dunne to Diana and how this will affect the neighborhood. He would like to see examples of similar situations.

Agency Member Chang stated that her concern is that the buffer area is not large enough, and remembers that there was great concern expressed by the neighborhood when the current dealership was first built.

Chairman Kennedy stated that he prefers Option A1, and agrees that the buffering needs to be reviewed. Ms. Maskell stated that the next step will be to present the selected concepts to the neighborhood in May and then come back the Agency Board in June. The environmental impact report work will be completed on the Option chosen, and staff will proceed with steps to amend the existing PUD and change the zoning to make the use compatible.

Agency Member Tate said his preference is between A and A1, depending on the General Plan impact. He stated he has no problem with the northerly expansion if it is acceptable to the neighborhood.

Mr. Cartel asked if the Agency Board is in favor of inclusion of the flex spaces as part of the overall concept.

Agency Member Sellers stated that it is important to let the public know where the plan is going. Flex spaces are fine for discussion and planning, but they may be ultimately removed.

Ms. Derosé stated that there may be strong opposition if A1 with flex spaces is chosen.

Vice Chair Sellers stated that he still has lots of questions to be answered. He wanted to know the facts on the statement that “demand far exceeds supply”; how will this be marketed; what are the relative benefits of the Anderson expansion; how can the city maximize its revenue; what are the economic impacts between the various options; and what are the concerns expressed by the neighbors. At this time, he is not ready to choose an Option.

Agency Member Carr stated that he would like staff to continue the dialogue with the neighborhood; and that the Board has more questions to be answered and discussion to occur before a choice can be made among the options presented.

Ms. Maskell asked if the direction of the Board is to keep all of the options.

Agency Member Carr responded that he has not eliminated any of the options in his mind, and felt that more discussion is needed.

Chairman Kennedy stated that it seems that Options B and C are more internal alternatives that would not affect the neighborhood; and that A or A1 affects them. He wanted all four Options presented to neighborhood.

This was the consensus of the Agency Board.

Action: *After review and discussion of the four site design concepts, the Agency Board **Directed** staff to present all four alternatives of the Site Design Concept to the Diana Avenue*

Neighborhood and receive their input. The Agency Board also stated that they would like to have another opportunity to review and discuss these alternatives before a final choice on site design is made.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Legal Authority: Government Code 54957
Public Employee Performance Evaluation: City Manager
Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:10 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:04 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that there were no reportable actions.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Mr. Fred Domino, of the Morgan Hill Sister Cities Association, led the Pledge of Allegiance.

RECOGNITIONS

Mayor/Chairman Kennedy addressed the assembly regarding the recent loss of four of Morgan Hill's citizens, who had dedicated themselves to serve the community through participation in the public arena: Bonnie Leonetti, Mas Minami, Rae Skeels Parker, and Marie Skinner. He presented Certificates of Recognition in the name of each for their many years of dedicated service to the people of Morgan Hill.

Mayor/Chairman Kennedy expressed his heartfelt sadness and regret at the passing of these wonderful friends and servants of the Morgan Hill community.

PRESENTATION

Dr. David Ting of the California Environmental Protection Agency - Office of Environmental Health Hazard Assessment, made a presentation to the City Council on the subject of "The Public Health Goal for Perchlorate in Drinking Water".

Topics covered in his presentation included: mode of action of perchlorate; sensitive individuals; critical endpoint and human data; perchlorate public health goal; and state and federal regulatory processes.

Mode of action: perchlorate affects thyroid function and causes other side effects at high doses. At doses relevant to environmental exposures the main health concern is disruption of thyroid hormone balance. Perchlorate interferes with the uptake of iodide in blood. In healthy adults, the thyroid has enough iodide stored to last for several weeks. Prolonged exposure causes a decrease in thyroid hormone secretion, which stresses the thyroid. Most people in California have a sufficient amount of iodide stored in their thyroid. The agency's goal is to protect all individuals, which includes those who may be deficient in iodide, pregnant women, lactating women, fetuses and infants, and individuals with impaired thyroid function.

The study's goal was to find a level that prevented interference with the uptake of iodide. Tests were run using human subjects drinking contaminated water to see the effect on their thyroid serum secretion. There was no change in this secretion, but there was a change in iodide uptake.

Perchlorate is not metabolized by the body and over 85% is excreted within 24 hours. Reduction of iodide uptake is reversible in short-term studies. Limited clinical and occupational studies done to date do not show long-term effects of perchlorate exposure. A sufficiently low dose does not interfere with the uptake of iodide into the thyroid.

Calculation of State PHG (Public Health Goal) worked out to 6ppb. This is the current state action level for perchlorate. The Federal EPA 2002 risk assessment set the level at 1 ppb, but that is now under review. That study was done on rats, not humans.

Further Information is available at website www.oehha.ca.gov

Council Member Chang questioned why the state action level was changed from 4 to 6 ppb.

Dr. Ting responded that the State level used to be 18 ppb. In 2002 the Federal EPA set a risk assessment of 1ppb after a study using rats as test subjects. Because of that reason, the State lowered their action level to 4ppb because this was the detection limit, and a commercial lab would have difficulty detecting less than 4ppb at that time. The change from 4ppb to 6ppb was done based on this study using human subjects, since human studies are considered to be a better indicator than previous animal studies.

Council Member Tate asked why the number 10 was chosen in the formula for the denominator, when the Federal EPA had used 300.

Dr. Ting responded that the formula had been reviewed several times, and based on criticism, they reduced their denominator to 10 from 30. EPA used a larger factor because they relied on animal studies rather than human. Humans may be more sensitive than animals, so for safety they apply a factor of 10. EPA had included several other factors to arrive at denominator of 300.

Council Member Tate responded that the City has been going by the 4ppb which is measured at the well, but that the level coming from the tap may not be as high as what is at the well because it is far from the source and there is mixing of water before it gets to the tap. This adds a safety factor to the measurement the city is currently using.

Council Member Chang asked if the 1ppb and 6ppb are more firm numbers of measurement than 4ppb because they were established thru scientific testing, whereas the 4ppb was only because it is the lowest number detectable.

Dr. Ting stated that the history of development of these standards is important. Before 2002 there was no official or authoritative assessment available to develop drinking water levels. In 2002 a draft risk assessment was released by the Federal EPA which set the level at 1ppb. There was no Public Health Goal (PHG) in existence at that time, and the Department of Health Services lowered the action level accordingly. Since the detection level was at 4ppb, the level was set at that point. The Federal study is still in draft and still under appeal and probably won't be finalized for another year or two. Comments are still being submitted that will need to be included. The State study is finalized, and he believes it is accurate.

Council Member Sellers asked if the low number of 10 in the denominator provides a built in safety factor.

Dr. Ting responded that he does consider it to provide a margin of safety. The intent was to protect all Californians and have a sufficient margin of safety, and he feels that was accomplished. The formula number used is half of the lowest dose ingested in the study. The factor of 10 is just to be sure that they have allowed for the most vulnerable who may be exposed.

Chairman Kennedy asked why the State number is used instead of the Federal number.

Dr. Ting stated that as a scientist he does his best to come up with a best estimate that is defensible. He is here to explain his justification and the factors involved in development of the public health goal and hopefully it makes sense. State number is just a goal, not a regulatory number. It will be used to develop a state MCL, which cannot be higher than federal MCL. It may take 4-5 years to develop these numbers. When EPA review is completed, the State will study and revisit this issue if the conclusion is relevant to their study.

Council Member Carr stated that the MCL takes into account other things besides toxicity, and asked if when the MCL level is set, will it be the determining factor of when we stop providing water to residents?

Dr. Ting stated that by law his agency is forbidden to consider economic factors in development PHG. It is the responsibility of the Department of Health Services (DHS) to develop the state MCL. In doing so, they will use the PHG as input, and will set the MCL as close to the PHG as possible after considering economic and engineering feasibility. DHS has an incentive to reach the PHG unless other constraints keep them from reaching that goal. They can set it higher if they have good reasons.

Council Member Carr stated that the city is required to test at wellhead, and the PHG is applied to that sample. If testing were done at the tap on what is actually being consumed instead of at the well, would this number still apply?

Dr. Ting stated that taking samples at the tap comes down to resources and costs. For perchlorate, the most effective way to test is at the well. He sees no advantage in doing it at the tap. Perchlorate is not like lead, which has to be measured at the tap, because it does not break down and does not change from source to tap. If you have a strong reason you can do it that way.

Mayor Kennedy commented that it is likely that levels would be lower at the tap than at the well because of the network of water supplies that are blended in the pipes. He thanked Dr. Ting for coming and stated that the Council may wish to have him return at a future date.

Vice Mayor Sellers asked staff to create a link from the city's website to Dr. Ting's website so citizens can access it more easily.

City Manager Tewes stated that the website of morganhill.ca.gov is linked to Dr. Ting's full report and this presentation will be placed on website as well.

CITY COUNCIL REPORT

Mayor Pro Tempore Sellers reported on a tour of other downtown communities that he took with Mayor Kennedy yesterday. They saw some very exciting and creative ideas being employed during their visits to Oakland, San Mateo and Palo Alto. All three had fascinating tours given by people that work there every day. The Downtown Report will incorporate several of those ideas, and he hopes to come back to the Council with this report in the next few weeks.

CITY MANAGER REPORT

City Manager Tewes stated he had no report this evening.

CITY ATTORNEY REPORT

City Attorney Leichter stated she had no report this evening.

OTHER REPORTS

None.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Fred Domino spoke regarding the Jazz on the Green fundraiser to be held to raise funds for the Live Oak band's tour of our Sister Cities, and asked for support of the community for this event.

Mark Grzan expressed his concern regarding Dr. Ting's study that 37 people are not representative of the population of California or Morgan Hill. How can these perchlorate levels be set based on only 37 people. He also stated that we have high degree of nitrates in our water supply and has seen no study considering that. He doesn't like any toxic substance in the water supply. There are those who may react even at levels considered safe. Once we start accepting 4ppb or 6ppb we put members of our community at risk. He would never accept any toxins in water at any level. We seem to be compromising values and assuming it is safe when still not proven. He would rather see us err on side of caution and say that it is not safe at any level.

Belinda Rianda asked why the perchlorate study had not included immune compromised and geriatric populations in the study, considering both conditions cause stress on the thyroid. What study did they use to model the reversibility of iodide reduction effect following chronic exposure? A two week study could never extrapolate chronic exposure.

Mayor Kennedy suggested that maybe during the break she could talk with Dr. Ting.

Dr. Ting responded that once the MCL is established, systems exceeding the MCL are required to notify DHS, remove water from service, and bring water into compliance. In response to Ms. Rianda's question, he stated that he recognizes the limitation of the study, and that no study is perfect. However, it covers a nice dose range and there are two other studies with fewer subjects and less rigorous design giving the same information, so it is not a stand alone study. This study was chosen after reviewing many other studies, so it was not chosen in a vacuum. The reversibility of iodide uptake into thyroid was part of the study. Before any exposure happened, they measured iodide uptake in the subjects. Then subjects drank perchlorate contaminated water for 14 days, and then measured iodide uptake again.

The difference shows any reduction of iodide uptake. Then subjects stopped drinking contaminated water for a 14 day recovery period, and were measured again for a third time. What they found was the third time measurement was about the same as the first time, and in some instance even higher in uptake, which showed that the process was reversible. Ideally they would have liked to have had more subjects with immune deficiencies, but that was not practical because of obvious ethical and logistical problems.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 3, 4, 6, 8, 10, 11-16, 18-29, as follows:*

2. RESIGNATION OF A PARKS & RECREATION COMMISSIONER

Mayor Pro Tempore Sellers asked for this item to be considered separately on the Consent Calendar in order to recognize Mr. Page for his service to the community.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Accepted** Rick Page's Notice of Resignation from the Parks & Recreation Commission.*

3. CALTRAIN ELECTRIFICATION PROGRAM ENVIRONMENTAL IMPACT REPORT (EIR)

Action: **Authorized** City Manager to Submit Comments.

4. SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND

Action: **Approved** the Fiscal Year 2003-2004 Spending Plan for the Supplemental Law Enforcement Services Fund.

5. PROPERTY USE AGREEMENT WITH AT&T WIRELESS

Mayor Pro Tempore Sellers asked for this item to be considered separately on the Consent Calendar. He asked if the new configuration of the towers will alter the impact on the community.

Assistant to the City Manager Dile responded that AT&T is proposing an additional four antennas, but they will be placed closer to the ground. Some of the clutter will be removed from the large pole, but it will remain because it is needed by the City and Valley Transportation Authority for their needs. She reported that the Planning Commission reviewed the project and felt the visual impact had been reduced. They have directed that the paint color of the installation blend with the surroundings. She stated that though she is not intimately acquainted with details, and is only familiar with the visual impact of the project, she does not believe there should be any impact on the community from the new installations. The new installation does improve coverage for AT&T.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Authorized** the City Manager to Execute a Property Use Agreement with AT&T Wireless for the Purpose of Operating a Telecommunications Facility at the El Toro Water Tank Site.*

6. **MARCH 2004 FINANCE & INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

7. **AQUATICS CENTER PROJECT – MARCH CONSTRUCTION PROGRESS REPORT**

Council Member Tate asked for this item to be considered separately on the Consent Calendar to allow Project Manager Ritter to address the Council.

Project Manager Ritter reported that he is very excited about the progress being made on the Aquatics Center. While there is much to be completed, he is confident that all will be done by the contract completion date of May 24, with the Grand Opening Ceremony being held on the weekend of June 12-13, 2004.

In response to Council inquiries, he reported that the asphalt will be installed on Condit and Barrett on May 26; the Deck pour will be completed on May 28-29; and the plaza on May 3-5.

He also stated that bricks purchased through the Aquatics Foundation as a fundraiser will be created and installed shortly before the Grand Opening. He stated that if anyone wants to have such a brick with their name on it, they should immediately contact the Aquatics Foundation or the Community Center at 782-008 for information on how to purchase a brick to support the Aquatics Center.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Accepted** Report.*

8. **APPROVE PURCHASE ORDER FOR FURNITURE AT THE AQUATICS CENTER**

Action: ***Authorized** the City Manager to Execute a Purchase Order in the Amount of \$60,894.11 with OPI (Office Produces & Interiors) for Furniture at the Aquatics Center.*

9. **DONATION FROM HOWARD LEWIS FOR AQUATICS CENTER**

Action: ***Accepted** Donation from Howard Lewis in the Amount of \$1,500 for the Purchase of Lifeguard Tower.*

Council Member Tate asked for this item to be considered separately on the Consent Calendar so that the Council could acknowledge and thank Mr. Lewis for his donation.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Accepted** the Donation from Howard Lewis in the Amount of \$1,500 for the Purchase of Lifeguard Tower.*

10. **AMENDMENT TO AGREEMENT WITH VALLEY TRANSPORTATION AUTHORITY (VTA) FOR SHELTER ADVERTISING PROGRAM**
*Action: **Approved** Amendment No. 5 to the VTA Shelter Advertising Program.*
11. **ADOPT A RESOLUTION DECLARING THE CITY OF MORGAN HILL'S COMMITMENT TO BEING A BICYCLE FRIENDLY COMMUNITY**
*Action: **Adopted** Resolution No. 5785 Declaring the City of Morgan Hill's Commitment to Being a Bicycle and Trails Friendly Community.*
12. **FINAL MAP ACCEPTANCE FOR CENTRAL PARK PHASE VII (TRACT 9562)**
*Action: 1) **Approved** the Final Map, Subdivision Agreement, and Improvement Plans; 2) **Authorized** the City Manager to sign the Subdivision Improvement Agreement on Behalf of the City; 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*
13. **APPROVAL OF SUBDIVISION AGREEMENT FOR COYOTE ESTATES PHASE VIII (TRACT 9567)**
*Action: 1) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; 2) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*
14. **AMENDMENT TO CONSULTANT SERVICES AGREEMENT FOR JACKSON OAKS BOOSTER STATION**
*Action: **Approved** Amendment to the Agreement with Freitas Engineering for Design and Construction Services on the Jackson Oaks Booster Station, Increasing the Contract Amount by \$13,500 and Extending the Completion Date to December 31, 2005.*
15. **AMENDMENT TO AGREEMENT WITH THE LAW OFFICES OF ROGER BEERS**
*Action: **Authorized** the City Manager to Execute an Amended Agreement with the Law Offices of Roger Beers.*
16. **AWARD CONTRACT FOR CITY OF MORGAN HILL AUDIT SERVICES FOR THE FISCAL YEARS ENDING JUNE 30, 2004, 2005 AND 2006**
*Action: **Authorized** the City Manager to Execute a Contract, Not to Exceed \$45,107, for Annual Audit Services Provided by Moss, Levy and Hartzheim for the three years ending June 30, 2004, 2005, and 2006.*
17. **DEDICATION OF POLICE FACILITY AT 16200 VINEYARD BOULEVARD**

Council Member Sellers asked for this item to be considered separately on the Consent Calendar. He asked that the minutes note that the Council had recently adopted a Council Policy regarding the naming of City facilities, and that this recommendation is entirely appropriate under that Council Policy.

Police Lieutenant Booten reported that John R. Moreno was an individual who contributed so much to the betterment of this community that it is very appropriate that the Council dedicate the new City of Morgan Hill Police Facility in his name; and that the dedication of the new facility to Mr. Moreno would be entirely in keeping with the guidelines the Council has established for the naming of public facilities.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** the Dedication of the new Police Facility, located at 16200 Vineyard Boulevard, in the name of Chief John R. Moreno.*

18. ADOPT ORDINANCE NO. 1666, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1666, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT FROM R-2 3,500 TO R-2 3,500/RPD RESIDENTIAL PLANNED DEVELOPMENT OVERLAY AND ADOPTION OF A PRECISE DEVELOPMENT PLAN FOR A ONE ACRE PARCEL LOCATED ON THE NORTH WEST CORNER OF WATSONVILLE ROAD AND CALLE SUENO (APPLICATION ZA-03-10: WATSONVILLE – SOUTH COUNTY HOUSING APN 767-23-017).***

19. ADOPT ORDINANCE NO. 1667, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1667, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 03-06 FOR MP 02-26: WATSONVILLE- SOUTH COUNTY HOUSING (APN 767-23-017).***

20. ADOPT ORDINANCE NO. 1669, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1669, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING FOR 120 WRIGHT AVENUE, A 8240 SQUARE FOOT LOT FROM R1-7,000 TO R3 AND AMENDING THE ZONING FOR 4.3 ACRES OF AN 8.3 ACRE LOT LOCATED ON MONTEREY ROAD APPROXIMATELY 700 FEET NORTH OF WATSONVILLE ROAD FROM R3 TO R2-3,500. (APN 764-14-003 & APN 767-23-016, ZA-04-03: CITY MORGAN HILL-ZONING MAP CORRECTIONS).***

21. ADOPT ORDINANCE NO. 1670, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1670, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT***

FROM MULTI FAMILY MEDIUM R-3 TO PUBLIC FACILITIES, PF FOR APPLICATION ZA-02-08: BUTTERFIELD-CITY OF MORGAN HILL REDEVELOPMENT AGENCY - COURT HOUSE (APN 726-12-006).

22. ADOPT ORDINANCE NO. 1671, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1671, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT FROM R2-3,500 TO PUBLIC FACILITIES ON AN 8.49-ACRE SITE LOCATED ON THE NORTH SIDE OF EDMUNDSON AVENUE AT THE SOUTHEAST SIDE OF COMMUNITY PARK FOR APPLICATION ZA-02-10: EDMUNDSON – MORGAN HILL REDEVELOPMENT AGENCY-INDOOR RECREATION CENTER (IRC) (APNS 767-18-025 & -037).

23. APPROVED MINUTES FOR SPECIAL CITY COUNCIL MEETING OF APRIL 7, 2004

24. APPROVED MINUTES FOR SPECIAL CITY COUNCIL MEETING TOUR OF AQUATICS CENTER CONSTRUCTION SITE OF APRIL 14, 2004

25. APPROVED MINUTES FOR SPECIAL CITY COUNCIL MEETING OF APRIL 14, 2004

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member and seconded by Council/Agency Member, the City Council/Agency Board unanimously (5-0) Approved Consent Calendar Items 26-27, as follows:*

26. APPROVED MINUTES FOR JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF APRIL 7, 2004

27. APPROVED MINUTES FOR JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF APRIL 14, 2004

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member and seconded by Agency Member, the Agency Board unanimously (5-0) Approved Consent Calendar Item 28, as follows:*

28. AWARD CONTRACT FOR MORGAN HILL REDEVELOPMENT AGENCY AUDIT SERVICES FOR THE FISCAL YEARS ENDING JUNE 30, 2004, 2005 AND 2006

Action: *Authorized the Executive Director to Execute a Contract, Not to Exceed \$17,169, for Annual Audit Services Provided by Moss, Levy and Hartzheim for the three years ending June 30, 2004, 2005, and 2006.*

City Council Action (Continued)

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) Reconsidered Item 29.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (4-0, with Chang absent) Approved Consent Calendar Item 29, as follows:*

29. ADOPT ORDINANCE NO. 1668, NEW SERIES

Action: *Waived the Reading, and Adopted Ordinance No. 1668, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1605, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-02: EAST DUNNE - GREWAL TO ALLOW FOR A FIFTEEN (15) MONTH EXTENSION OF TIME (APN 728-11-026).***

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

30. ZONING AMENDMENT, ZAA-01-05: MONTEREY-SOUTH VALLEY DEVELOPERS/GATEWAY CENTER

Council Member Chang excused herself from this item and stepped down from the dais.

City Manager Tewes announced that this will be the last staff report presentation to be made by Director of Community Development Bischoff, as his retirement is imminent. He thanked Mr. Bischoff for his excellent work and outstanding professionalism during his many years as head of the Community Development Department.

Mr. Bischoff thanked the Council and the staff for the last 18 years of serving the city, and presented the staff report on this item as included in the agenda packet. He made one correction to the staff report, stating that the Planning Commission vote should be corrected to 7-0 for approval.

Mayor Pro Tempore Sellers stated that he had originally opposed this project. He noted that he has used the facility and has observed that the traffic flow pattern is counter-intuitive and meandering, and asked if there would be directional signs to assist customers to find their way through the center to the drive-thru of the coffee shop.

Council Member Carr asked that the center median be extended further south to prevent northbound traffic from attempting to make unsafe entry into the Center across southbound traffic on Monterey Road. He requested that this be done as soon as possible.

Mr. Bischoff responded that the median will be extended further south on Monterey to eliminate this problem. He invited the developer to address the Council.

Scott Schilling, of South Valley Developers, presented his proposed amendments of the plan to the Council. He stated that this amendment proposes a use that is more upscale than a fast food restaurant. They currently have a customer interested in such a use. He hopes that one key anchor tenant will help attract another anchor tenant. He agreed that the current traffic circulation is awkward, but the new layout will correct some of those difficulties with traffic flow and circulation would be improved. He noted that the buildings are pushed closer to Monterey Road, and there is a 25 foot drive aisle provided. Also, the service of the coffee shop drive thru has a turn over time of about 2 minutes, which is half of what a fast food restaurant's turn over time is for the drive thru. Areas have also been provided that are suitable for restaurant use in the future with outdoor patio areas. There is a wall placed along side the drive thru which provides a screen on Monterey Road. He stated that the median on Monterey Road will be extended south past Parcel 2 to eliminate the unsafe entry to the Center. The parking would currently be completed to Parcel 3, though they hope to be able to complete both sections at the same time if possible. There will be more buffering and landscaping than is required by code in the parking areas and parking islands. Also, there are added patio and landscaping around the buildings, with a wider greenbelt buffer on the Monterey Road side.

Mayor/Chairman Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers stated that it looks like there are two ways to access the drive thru, and asked that signs be placed to direct traffic. His previous objections to this project in its original submission were based on the AM-PM portion and products that were not best for the school age children of the area; but now he supports this project in its amended form, and commended the developer on a good job.

Council Member Tate expressed his concern about changing Parcel 4 from office to retail. He likes the original plan to include this mixed use, and would rather see it changed later if there is a market for the change and retail is all that can be placed in this location.

Mr. Schilling explained that it is a matter of the time and cost involved in obtaining a zoning amendment; and he is asking for this flexibility in order to avoid further time and expense. If he is approached by a retailer this approval would give them the freedom to work with staff and not have to return for Council approval. Currently it is being planned as an office building, but it would be nice to have the flexibility if a key tenant was interested in the space. If it is decided to develop it as retail space, it would be a single story similar to the design shown in the PUD. The current plan is to keep it as office space if at all possible to retain the mix of uses within the Center.

Council Members Carr and Tate expressed the desire that the mix of uses be retained if at all possible to avoid this becoming just another strip mall.

Council Member Carr requested that in future preparation of staff reports, the Planning Commission minutes be attached so the Council has the full information on the Planning Commission decision.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (4-0, with Chang absent) **Waived** the Reading in Full of the Zoning Amendment Ordinance No. 1672, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** the Zoning Amendment Ordinance No. 1672, New Series by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1549, NEW SERIES, TO ALLOW AMENDMENT OF THE APPROVED GATEWAY CENTER PLANNED UNIT DEVELOPMENT LOCATED AT 18605 MONTEREY ROAD. (APPLICATION ZAA-01-05: MONTEREY – SOUTH VALLEY DEVELOPERS) (APN 764-10-004), by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.***

31. AMENDMENT OF MUNICIPAL CODE REGARDING LIMITATIONS ON ADVERTISING OF TOBACCO PRODUCTS

Council Member Chang returned to the dais.

City Attorney Leichter presented the staff report as provided in agenda packet.

Mayor/Chairman Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1673, New Series Amending Section 18.76.020(56.5) and 18.76.250 of the Municipal Code.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1673, New Series by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 18.76.020(56.5) (Definitions – Tobacco Advertising Sign) AND AMENDING SECTION 18.76.250 (Commercial and Industrial Zone Signs – Window Signs) OF CHAPTER 18.76 (Sign Code) OF TITLE 18 (Zoning) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF TOBACCO ADVERTISING SIGNS)**, by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

City Council Action

OTHER BUSINESS:

32. COYOTE VALLEY SPECIFIC PLAN – MORGAN HILL PARTICIPATION

Director of Community Development Bischoff presented the staff report as provided in the agenda packet. He stated that one item that was not included in the agenda packet is that the San Jose representatives intended to come up with a third alternative plan by the end of September. To try and meet this goal, they are scheduling several meetings and workshops to be held at least once a month between now and September. The workshops will be used as a decision making forum, and the City will have opportunities for significantly improving the communication process.

Council Member Tate stated that he had requested this item be placed on tonight's agenda. He is not ready to say we should take legal action against the City of San Jose because they seem unwilling to allow the City of Morgan Hill to have a seat at the table with them; however, they need to hear that these decisions will have a significant impact on Morgan Hill air quality, traffic, schools, and so forth; and those impacts will come down to creating legal impacts on us down the road. The question is how we prevent these impacts by getting them to consider our needs up front. He feels we need to use something stronger than a request letter to focus the San Jose City Council's attention on the fact that repercussions could be avoided if we can be involved in the decision making. He is looking for a way to bring their attention to what the potential impacts are for the future of Morgan Hill.

Mayor Kennedy stated that he will be meeting with San Jose Mayor Gonzales in about two weeks and also with Council Member Williams. He would like the Council to let him know what message they want him to deliver to the City of San Jose.

Mayor Pro Tempore Sellers stated his belief that even if we have a seat at the table we won't be able to significantly alter the direction that this task force is taking; although we will be able to enlighten them

to the potential impacts of their decisions. Although we may have to pursue legal options; if we are at the table, we may be able to avoid problems in the future. At the Task Force meeting it was pointed out that Morgan Hill residents know more about Coyote Valley than San Jose residents. He encouraged the Mayor to continue to pursue this issue, and recalled that at one of the first meetings they had with Mayor Gonzales, he pledged cooperation. Now, six years later, it seems we can't even get a response to a letter within three weeks. This does not bode well for the process. We need to get the message across that it is good for all concerned to let us participate.

Council Member Tate suggested that all Council Members speak to their colleagues in San Jose and bring this issue to their attention.

Mayor Kennedy expressed his concern that if they build the industrial areas first, the impact on our housing market from Coyote Valley workers needing housing will put such a tremendous demand on housing that it will force Morgan Hill families out of the market.

Mayor Pro Tempore Sellers noted that he is very concerned about the school being inadequate to handle the demand, and that San Jose needs to do something to pick up the slack in this area.

Council Member Tate expressed concern about the air quality issues that will arise.

Council Member Carr stated that health care is also an issue to be considered. He also suggested that if we are going to continue to be rebuffed we need to take the information that has been formally presented, review it as if it were an EIR, and send formal comments to the Task Force. We should schedule this in a workshop setting, and invite Supervisor Don Gage to attend, along with the Morgan Hill Unified School District, the Gavilan College District, and the City of Gilroy. We need to bring the voice of the South County to the table. Don Gage has a seat at the table already, and can be there to represent us if we can't get a seat of our own.

Mayor Kennedy suggested that the Planning Staff and Planning Commissioners send representatives to attend all Task Force meetings to make sure we know what is happening and where it is appropriate to provide input into the process. He did not feel it was appropriate for a Council Member to attend as just a person in the crowd with no voice, but it is important to keep track of what is going on so the Council can act if there is something that needs action.

Mr. Bischoff responded the Planning Commissioner Engles has been attending some of the meetings, and a member of the Planning staff has also been attending the Technical Advisory meetings.

Council Member Tate stated that he feels like this is acquiescing, and that we need to make a strong effort to get a seat of our own at the table, and not back off on this issue.

Council Member Chang stated that she agrees with Council Member Carr's suggestion of gathering a larger force composed of Supervisor Gage, MHUSD, Gavilan College District and the City of Gilroy to initiate a discussion and request a seat as a group. Since Supervisor Gage already has a seat on the Task

Force, we should ask him to talk with Mayor Gonzales and get us a seat on the Task Force. At the very least we should ask him to be our representative on the Task Force.

Council Member Carr stated that he understands Council Member Tate's sense of acquiescence. His idea is to ask Supervisor Gage to represent us at the table in pleading our case that South County needs a representative at the table other than himself; or for him to carry the issues that we have to the table for us. We could do that and still continue to push to get a seat for ourselves. Letters should be sent to all Task Force Members, San Jose City Council Members and perhaps we would find a sympathetic ear.

Mayor Kennedy stated that we should set up a workshop agenda item, and request attendance by Supervisor Gage, Gavilan College Board, and the School Board or their representatives to sit around the table and discuss this issue.

Council Member Carr stated that this should not be an informal meeting to air concerns, but a formal review of what has been presented to date with a formal response of quantifiable information to present to Supervisor Gage, as would be done if this were an EIR review.

Mayor Kennedy asked if it would make sense to have Mr. Bischoff prepare such a summary or review.

City Manager Tewes responded that this level of review would have budgetary impact, and that he will prepare information for the Council to provide them with options to review.

Council Member Carr stated that in a previous meeting with the San Jose staff their attitude was "they agreed to disagree" with us, and that is not satisfactory. They are unwilling to even engage in a discussion, so we need to clearly lay out our case.

Mayor Kennedy suggested a preview meeting with our staff before inviting Supervisor Gage so we are prepared and have our agenda in place before meeting with the Supervisor.

Council Member Carr stressed that San Jose has stepped up their pace, so we can't take too long to get this done. There is also the factor of not knowing how long it will take to get on the Supervisor's calendar.

Council Member Chang stated that if we make a special request to Supervisor Gage, we should be able to talk with him very soon. We could use the concerns that were laid out at the last workshop.

Mayor Kennedy agreed that this was a good suggestion, and that it should be put into the form of a summary to use as the basis of the meeting with Supervisor Gage, inviting the Morgan Hill Unified School District, City of Gilroy, and Gavilan College representatives to participate.

By consensus the Council agreed on this approach.

Mayor Kennedy opened the public comment.

Mr. Jim Arthur stated that he recently moved to Morgan Hill, and one of the reasons he moved was to get away from the types of problems this project is going to create where he now lives. He is not happy to hear that it will be in his backyard again. He went to the last task force meeting and was taken aback by the arrogance of what is going on. Questions were raised by residents of Coyote Valley, and he had a hard time understanding what is going on and why this is on a fast track now. The scope of the project is mind-boggling and scary. He doesn't feel Supervisor Gage is sympathetic, and is pro growth. He stated that the Council needs to escalate what they are going to do. They need to let the local citizens know what is going on, because a lot of people don't understand what is going on with this expansion. They need a movement of local people. It will affect everyday life of people in South County. He doesn't know how to do that, but we need to get the word out to people to make them understand what is being proposed in this project. They are going to make a decision by the end of the year and break ground by 2006. It will happen, and the scope is open for discussion. We should get this information out to the citizens of Morgan Hill, Gilroy and Hollister.

Mayor Kennedy thanked him for his input and asked to meet with him and get his thoughts and perspective.

Ms. Jessica Vernon addressed the Council and stated that she also recently moved to Morgan Hill. She is concerned about the lack of public awareness that 80,000 people will be added to an area not able to handle that many people. She asked if this has been brought up in a public forum through the San Jose Mercury News. The largest impact will be on citizens in Morgan Hill and not San Jose. It is disturbing that we do not have a seat on this task force. More publicity might help. She also was at the task force meeting on Monday, and this is rapidly accelerating. There is a need for more community awareness. She handed out fliers in her own neighborhood of Mission Ranch yesterday. People don't realize what the impact will be on the community. Crime is also another aspect to consider. She wanted to know how we as citizens can help with this. She reported that Pat Dando did express more concern for impact on South County, and that she may be someone to contact about getting a seat on the task force.

Mayor Kennedy asked if he might be able to meet with her also for further input.

Council Member Tate noted that the perspective of the Council Members of the City of San Jose is that we are so much smaller in size than San Jose. We need to find a way to make them pay attention to us.

Mayor Pro Tempore Sellers has been in touch with the Chief Editorial Writer of the Mercury News, who has stated that there should be more representation from the South County on the task force.

No further public comments were offered, and the public comment was closed.

Action: *City Council consensus **Directed** staff to prepare a summary of the concerns expressed at the last workshop on this issue and arrange a meeting to discuss them with Supervisor Gage, inviting the Morgan Hill Unified School District, City of Gilroy, and Gavilan College representatives to participate. Every effort will be made to obtain a seat of representation for the City of Morgan Hill on the Task Force.*

33. AMENDMENT TO AGREEMENT FOR LAND USE PLANNING CONSULTING SERVICES

Director of Community Development Bischoff presented the staff report.

Council had no questions on this item. Mayor Kennedy once again complimented Mr. Bischoff on his professionalism and thanked him for his many years of excellent service to the city reiterating that it has been a pleasure and honor to work with him.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Amendment to Contract with Kenneth R. Schreiber Adding \$14,410 for Land Use Consulting Services in Conjunction with the Urban Limit Line Study.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

34. CITY COUNCIL/REDEVELOPMENT AGENCY SUMMER MEETING SCHEDULE

Council reviewed the Council Meeting Schedule for the months of June, July and August, 2004.

Mayor Pro Tempore Sellers stated that he has a major family event occurring in late June and can't be at the meeting of June 23. He asked if the budget would be approved at that meeting, or if it is just a "placeholder", in which case he will continue with his plans.

City Manager Tewes stated that at this time it is not known what the agenda items will be for June 23, but this date on the budget calendar is a "back-up" date for approval of the budget. He also stated that the Council may want to consider cancellation of the first meeting in July because of the Independence Day holiday.

Mayor Kennedy stated that there will be two delegations visiting Morgan Hill for the 4th of July and will be here during that week, so he would like to have a meeting on July 7th so he can invite them to attend and be introduced.

Mayor Kennedy stated that he has a vacation planned in August, but did not have the dates with him tonight.

After further discussion, it was the consensus of the Council Members that the meeting in June would be left as scheduled for now until it is determined if it will be needed for the budget approval; and that there would be cancellations in August to allow the Mayor to continue with his scheduled vacation. The August cancellation date(s) will be determined after he submits the dates of his vacation to the City Clerk.

No comments were offered by the public on this item.

Action: *City Council/Agency Board consensus (5-0) **Directed** staff to adjust the meeting schedule in August based on the dates to be provided by the Mayor; which resulted in the cancellation of the August 4, 2004 meeting. All other summer meeting dates to remain as scheduled, but the meeting of June 23rd may be subject to cancellation depending on the final approval of the Budget.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Chang requested that there be a discussion of the Status of the Soccer Complex; and direction given as to whether the Soccer Complex Sub-Committee, to which she and Mayor Pro Tempore Sellers were previously appointed, should be activated to participate in the discussions occurring on this issue.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:58 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK/DEPUTY AGENCY SECRETARY



CITY COUNCIL STAFF REPORT

MEETING DATE: MAY 5, 2004

Agenda Item # 10

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1672, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1549, NEW SERIES, TO ALLOW AMENDMENT OF THE APPROVED GATEWAY CENTER PLANNED UNIT DEVELOPMENT LOCATED AT 18605 MONTEREY ROAD AT THE INTERSECTION OF COCHRANE AND MONTEREY ROADS. THE AMENDMENT INCLUDES THE ADOPTION OF A REVISED PRECISE DEVELOPMENT PLAN FOR THE PROJECT. (APPLICATION ZAA-01-05: MONTEREY – SOUTH VALLEY DEVELOPERS) (APN 764-10-004).

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1672, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On April 21, 2004, the City Council Introduced Ordinance No. 1672, New Series, by the Following Roll Call Vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.

FISCAL IMPACT: None. Filing fees were paid to the City to cover processing of this application.

ORDINANCE NO. 1672, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1549, NEW SERIES, TO ALLOW AMENDMENT OF THE APPROVED GATEWAY CENTER PLANNED UNIT DEVELOPMENT LOCATED AT 18605 MONTEREY ROAD. (APPLICATION ZAA-01-05: MONTEREY – SOUTH VALLEY DEVELOPERS) (APN 764-10-004).

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** The proposed Zoning Amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The Zoning Amendment is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An Environmental Initial Study was prepared for the overall 6.22-acre Planned Unit Development. A Mitigated Negative Declaration was filed on May 6, 2002.
- SECTION 4.** The City Council finds that the proposed Amendment to the Gateway Center PUD and revised Precise Plan are consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** Approval of the Gateway Center PUD Amendment and revised Precise Development Plan shall allow the following amendments to Ordinance No. 1549 and the Gateway Center PUD Guidelines and Development Plans, approved by the City Council on May 1, 2002:
- 1) Elimination of the fast food restaurant on Parcel 2;
 - 2) Increase in the size of the retail building on Parcel 2 to 6,735 square feet to provide a maximum of four (4) tenant spaces and to allow a coffee shop with a drive-thru at the southerly end of the building;
 - 3) Decrease in the size of the building on Parcel 3 to approximately 15,000 square feet of leasable space to accommodate a maximum of eight (8) tenant spaces;
 - 4) Elimination of the existing PUD text requirement requiring the developer to “to have the Parcel 3 retail building under construction prior to the Parcel 2 fast food restaurant”; and,
 - 5) A text addition to allow either office or single story retail building on Parcel 4.
- SECTION 6.** The City Council hereby approves the Gateway Center PUD Amendment and revised Precise Plan, attached as Exhibit “A”, and contained in that certain series of documents on file in the Community Development Department,

entitled "Gateway Center Parcels 2 & 3", prepared by MH Engineering Company. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, parking areas, landscape areas and any other purposeful uses on the project.

SECTION 7. With the exception of the amendments allowed under Section 5 of this Ordinance, buildout of the Gateway Center PUD shall comply with Ordinance No. 1549, new series and the Gateway Center PUD Guidelines and Development Plans, adopted by the City Council on May 1, 2002. Any modifications to the approved building plans shall also comply with the site development standards of the PUD Guidelines and Ordinance No. 1549.

SECTION 8. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 9. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 21st Day of April 2004, and was finally adopted at a regular meeting of said Council on the 5th Day of May 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1672, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th Day of May 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: May 5, 2004

PROTEST PRO-04-02: ANNEXATION ANX-02-02: COCHRANE – BORELLO II

RECOMMENDED ACTION(S):

1. Open/close Public Hearing.
2. Adopt a Resolution of Intent to Hold a Public Hearing on the “Protest Proceeding” at the regular Council meeting of June 2, 2004.

EXECUTIVE SUMMARY:

The applicant, Mr. Stanley Borello, is requesting to annex two parcels, totaling approximately 15-acres, into the City of Morgan Hill. The site is located east of Peet Road, between Cochrane Road to the north and west and Half Road to the south and is surrounded on three sides by the City’s boundary. Inclusion of the parcels into the City limits would represent a logical adjustment of the boundary. The subject site is located within the City’s Urban Service Boundary. Existing water and sewer lines are available within the site vicinity, and are of sufficient size to service future development of the site.

On June 25, 2002, the Commission voted unanimously (7-0) to recommend approval of the annexation. The applicant met with the property owner of parcel number 728-34-006, Mr. David Fanara, regarding inclusion of his parcel in the applicant’s request. Mr. Fanara has indicated that he opposes inclusion of his property in the annexation. Two letters from Mr. Fanara to the City (dated 3/19/02 and 10/30/03) are attached. Mr. Fanara’s primary concern is his ability to continue stabling horses and other livestock on his property. Section 6.36.060 of the Municipal Code requires a special permit for locating livestock within 200 feet of a residential structure and an absolute minimum buffer of 100 feet between an animal corral or livestock and any residential structure. Mr. Fanara’s horse corral fence runs along the shared property line. Annexation of Mr. Fanara’s parcel would create a non-conforming use, since the corral must be placed a minimum of 85 feet north of the shared property line, assuming a 15-foot required side yard set-back in the proposed R1-20,000 zoning district for the applicant’s parcel. Mr. Fanara’s parcel is not large enough to move the corral outside the required setback buffer. The applicant is required to place a 100-foot scenic easement along the northern property line, to provide the required buffer between the livestock and proposed residential structures as a condition of approval of this project. However, Mr. Fanara continues to request exclusion from the proposed annexation. The City’s position relative to this annexation has consistently been that both parcels must be annexed together because eliminating Mr. Fanara’s parcel from the request would result in the creation of an island of unincorporated land within the City boundaries, which is prohibited by California Government Code Section 56757 C4.

Mr. Borello (applicant) submitted an application on March 24, 2004 requesting a “Protest Proceeding” before the City Council to require inclusion of the Fanara property in the proposed annexation. In accordance with LAFCO policy, when an annexation is proposed not having 100 percent consent by all property owners, the City Council is required to hold a public hearing and adopt a resolution to initiate a Protest Proceeding. At the public hearing, the Council must set a date certain for the Protest Proceeding to be Noticed and held between 21 and 60 days of the public hearing. Staff recommends that the Protest Proceeding be set for the Council meeting of June 2, 2004. No other action is to be taken on this matter at this meeting.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

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Agenda Item # 11

Prepared By:

Contract Planner

Approved By:

CD Director

Submitted By:

City Manager

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL SETTING DATE CERTAIN FOR CONSIDERATION OF REORGANIZATION OF AREA DESIGNATED “COCHRANE ROAD ANNEXATION NO. 11”, PROPERTY LOCATED EAST OF PEET ROAD, BETWEEN COCHRANE ROAD TO THE NORTH AND WEST AND HALF ROAD TO THE SOUTH OF APPROXIMATELY 15 ACRES AND WITHDRAWAL OF SAID TERRITORY FROM THE SOUTH SANTA CLARA COUNTY FIRE PROTECTION DISTRICT. (APNs 728-34-006 and 007)

WHEREAS, the City Council of the City of Morgan Hill has received a written petition in accordance with the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, requesting to annex into the City of Morgan Hill certain territory designated “Cochrane Road Annexation No. 11”, located in the County of Santa Clara, State of California, hereinafter more particularly described; and

WHEREAS, the property, consisting of approximately 15 acres on the east side of Peet Road between Cochrane Road and Half Road (APNs 728-34-006 and 007), is contiguous to the City of Morgan Hill and is within the urban service area; and

WHEREAS, the following special district would be affected by the proposed annexation: the South Santa Clara County Fire Protection District; and

WHEREAS, annexation would provide for use of City services; and

WHEREAS, this territory was rezoned on August 21, 2002, to City of Morgan Hill, Pre-zone designation of R-1 (20,000); and

WHEREAS, the City of Morgan Hill, as Lead Agency for environmental review for the reorganization, a Mitigated Negative Declaration was adopted on August 23, 2002; and

WHEREAS, the proposed annexation is described in greater detail in the attached map and description (Exhibits “A” and “B”); and

WHEREAS, as provided in Government Code Section 56757, the City Council of the City of Morgan Hill shall be conducting authority for a reorganization including an annexation to the City; and

WHEREAS, said territory is uninhabited and all owners of land included in the proposal have not consented to this annexation;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Morgan Hill hereby initiates annexation proceedings and will consider annexation of the territory to the City designated as "Cochrane Road Annexation No. 11", and detachment from the South Santa Clara County Fire Protection District at a public hearing on May 5, 2004; and,

BE IT FURTHER RESOLVED, that the City Council of the City of Morgan Hill will hold a Protest Proceeding on this matter at the regular Council meeting of June 2, 2004.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th Day of May, 2004 by the following vote.

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on May 5, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: May 5, 2004

Agenda Item # 12

COMMUNITY DEVELOPMENT USER FEE ADJUSTMENTS

RECOMMENDED ACTIONS:

1. Open & close Public Hearing
2. Adopt the Resolution

Prepared By:

Finance Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: On July 17, 2002, the City Council adopted a new schedule of user fees effective September 17, 2002. The revised fees and new fees were based upon the attached study conducted by the City's consultant, Maximus. The consultant and staff presented proposed changes to User Fees including Planning, Building, and Engineering fees. The consultant determined the fee necessary to recover the estimated cost incurred by the City for each activity for which the City charges the public. Collectively, fees brought into the Community Development Fund \$2,022,137 in an average year, but accounted for \$3,370,661 in costs, causing a \$1,348,524 annual loss. The consultant calculated that to fully recover these costs, Planning fees would need to increase by 129%, Building fees by 41%, and Engineering fees by 55%. In general, City practice has been to establish a policy regarding the percentage of costs borne in providing regulation, products, or services, and allow the City Manager to determine the actual percentage of costs. Current City policy, as stated in Municipal Code Chapter 3.50, is to recover 100% of costs reasonably borne in providing regulation, products, or services, with certain exceptions. For those Building fees referenced in the Uniform Building Code (UBC) tables, fees were adjusted in September 2002 to the 1997 UBC table amounts, which provided for full cost recovery of those fees.

For remaining Community Development fees, (Planning, non-UBC Building, and Engineering fees), due to the pendency of the development processing audit, the City Council approved, effective September 1, 2002, maximum increases of only 20%, instead of the larger increases necessary to bring these fees to the 100% mark, and directed staff to return following completion of the development processing audit with a more detailed assessment as to whether the large increases could be reduced. On November 6, 2002, staff presented to the City Council the response to the audit. The study did not identify areas for significant operating cost reduction, but rather recommended increased contract staffing. As a result, staff recommended, on March 19, 2003, that fee adjustments necessary to bring planning, building, and engineering fees up to full cost recovery be implemented over a three year period beginning July 1, 2003, so as to minimize effects on the economic well-being of the community. Staff requested approval at that time for only one-third of the remaining increases necessary to bring fees up to full cost recovery, with the understanding that the projected increases programmed for July 1, 2004, and July 1, 2005, would be brought back to the City Council to determine whether those increases would be necessary at those times. In addition, staff recommended that most fees be adjusted by an inflationary factor each July 1 beginning July 1, 2003, so that inflation would not diminish full cost recovery. The City Council approved staff's recommendations.

Staff recommends at this time that the second phase increasing certain Community Development fees be implemented, consistent with the three year phase-in plan previously presented. These increases are necessary for the Community Development Fund to recover costs of providing services to the public. Staff plans to return during fiscal year 2004/05 with recommendations concerning the necessity of implementing the final phase of projected fee adjustments. Exhibit A to the Resolution describes current fees, proposed July 6, 2004, increases, and projected July 1, 2005, fee adjustments.

Staff advised developers by sending them a copy of Notice of Public Hearing.

FISCAL IMPACT: The City would more accurately recover costs from those using City services.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REVISING FEES AND SERVICE CHARGES PURSUANT TO TITLE 3, CHAPTER 3.50, OF THE MORGAN HILL MUNICIPAL CODE

WHEREAS, on September 7, 1988, the City Council of the City of Morgan Hill adopted Ordinance No. 880, N.S., codified as Chapter 3.50 of the Morgan Hill Municipal Code, which establishes city policy as to the percentage of the City's costs to be recovered from users of City services; and,

WHEREAS, consistent with Chapter 3.50, City policy is to recover the full cost of providing special services of a voluntary and limited nature, in order that general tax monies used to fund services of a broader nature, such as police and fire protection, are not diverted and thereby utilized to unfairly and inequitably fund special services; and,

WHEREAS, in order to effectuate its cost recovery policy the City Council has adopted various resolutions setting forth fees and charges; and,

WHEREAS, in a report dated May 2002, by DMG Maximus, the City of Morgan Hill conducted an extensive and exhaustive analysis of its services, the costs of providing those services, the beneficiaries of those services, and the revenues produced by those paying fees and charges for those services; and,

WHEREAS, City staff has made available to the public documentation related to the costs of providing those services and the analytical process used to arrive at such costs, along with revenues produced by those paying fees and charges for those services, and has held two public information sessions regarding the same; and,

WHEREAS, on May 5th, 2004, the City Council held a noticed public hearing on the fees, and duly considered all written and verbal information presented to it, which testimony and exhibits are hereby incorporated into the record of this matter.

NOW, THEREFORE, the City Council of the City of Morgan Hill, based upon all documents, statements and facts known to the City, does hereby resolve:

SECTION 1. Fee Schedule Adoption. Based upon the record before it and the findings set forth above, the City Council hereby adopts the schedule of fees and charges, described in the column entitled "Proposed Fee July 6, 2004," attached hereto and incorporated herein on Exhibit A, so that the fees and charges attached hereto in Exhibit A, within the column entitled "Proposed Fee July 6, 2004," are implemented. The City Council directs the City Manager to have appropriate City departments apply and collect said fees for identified services.

SECTION 2. Separate Fee For Each Process; Additional Fees and Refunds. All fees set by this resolution are for each identified process or service. Additional fees shall be required for each additional process or service that is requested or required. Where fees are indicated on a per unit

basis of measurement, the fee stated is for the identified unit or portion thereof within the indicated ranges of such units.

SECTION 3. Collection of Fees and Implementation Dates. The City Council hereby orders that all increases in fees specified in Exhibit A, in the column entitled "Proposed Fee July 6, 2004," be effective July 6, 2004. The City Council finds that delay in implementation of full cost recovery until the projected date of July 1, 2005, as described in Exhibit A in the column entitled "Projected Fee July 1, 2005," is necessary to (1) encourage the economic well-being of the community through proactive initiatives which leverage private sector investment and involvement, thereby lessening some of the cost impacts on projects, and (2) to allow developers certainty in the development process.

SECTION 4. Automatic Annual Adjustment. Each fee, for which "CPI" is referenced in Exhibit A, shall be adjusted automatically on July 1 of each fiscal year by the increase in the Consumer Price Index for Urban Wage Earners, for the year ended the previous April.

SECTION 5. Interpretation. This Resolution may be interpreted by the City Manager. Should there be a conflict in regards to the applicability of the fees, or the charges imposed thereunder, the City Manager is authorized to determine which fee, or combination thereof, should be applied.

SECTION 6. Severability. If any portion of this Resolution is declared invalid by a court of competent jurisdiction, then it is the intent of the City Council that all other portions of the Resolution shall be severed and remain in full force and effect.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th Day of May, 2004, by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No._____, adopted by the City Council at a Regular Meeting held on May 5, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

Service No	Account Number	Service Center	Unit	Current Fee	Proposed Fee July 6, 2004	Projected Fee July 1, 2005
3	206-38148	Sign Permit Review & Inspection	Application	\$569	\$754 + <u>CPI (1)</u>	\$938 + <u>CPI (2)</u>
3 A	206-38149	Sign Copy Review	Application	\$132	\$225 + <u>CPI (1)</u>	\$318 + <u>CPI (2)</u>
4	206-38418	Bldg. Compliance Inspect.	Inspection	\$129	Same + <u>CPI (1)</u>	Same + <u>CPI (2)</u>
7	206-38159	Tentative Parcel Map Fee	Application	\$2,883	\$3,333 + <u>CPI (1)</u>	\$3,783 + <u>CPI (2)</u>
8	206-38160	Tentative Subdivision Map Fee	Application	\$4,360	\$4,581 + <u>CPI (1)</u>	\$4,801 + <u>CPI (2)</u>
9	206-38138	Reversion to Acreage Permits	Application	\$1,643	\$2,524 + <u>CPI (1)</u>	\$3,404 + <u>CPI (2)</u>
10	206-38712	Lot Line Adjustment (PW)	Application	\$934	\$1,111 + <u>CPI (1)</u>	\$1,287 + <u>CPI (2)</u>
11	206-38155	Arch & Site Plan Review	Application	\$2,875	\$3,543 + <u>CPI (1)</u>	\$4,210 + <u>CPI (2)</u>
12	206-38153	Site Plan Review Fees	Application	\$2,378	\$3,055 + <u>CPI (1)</u>	\$3,732 + <u>CPI (2)</u>
13	206-38154	Conceptual Plan Review	Application	\$1,866	\$2,793 + <u>CPI (1)</u>	\$3,720 + <u>CPI (2)</u>
16	206-38147	Uniform Sign Program	Application	\$1,230	\$1,553 + <u>CPI (1)</u>	\$1,875 + <u>CPI (2)</u>
17	206-38133	Time Ext. Review-Non Admin.	Application	\$1,471	\$1,943 + <u>CPI (1)</u>	\$2,415 + <u>CPI (2)</u>
17 A	206-38132	Time Ext. Review-Admin.	Application	\$464	\$699 + <u>CPI (1)</u>	\$933 + <u>CPI (2)</u>
18	206-38156	Preliminary Plan Review	Application	\$3,237	\$3,651 + <u>CPI (1)</u>	\$4,064 + <u>CPI (2)</u>
19	206-38170	Conditional Use Permit	Application	\$3,205	\$3,912 + <u>CPI (1)</u>	\$4,618 + <u>CPI (2)</u>
20	206-38174	Variance Review	Application	\$2,960	\$3,825 + <u>CPI (1)</u>	\$4,690 + <u>CPI (2)</u>
20 A	206-38175	Variance Review-Minor Exceptions	Application	\$1,079	\$1,520 + <u>CPI (1)</u>	\$1,960 + <u>CPI (2)</u>
21	206-38171	Temporary Use Permit Review	Application	\$938	\$1,287 + <u>CPI (1)</u>	\$1,635 + <u>CPI (2)</u>
22	206-38169	Out-of-Agency Service Request	Application	\$3,075, plus any LAFCO fees	\$3,859 + <u>CPI (1)</u> plus any LAFCO fees	\$4,642 + <u>CPI (2)</u> plus any LAFCO fees
23	206-38181	Planned Unit Development	Application	\$3,869	\$4,523 + <u>CPI (1)</u>	\$5,177 + <u>CPI (2)</u>
25	206-38135	General Plan Review & Revision	Application	\$3,785	\$4,267 + <u>CPI (1)</u>	\$4,749 + <u>CPI (2)</u>
26	206-38100	Annexation Processing	Application	\$3,277 plus any LAFCO fees	\$4,123 + <u>CPI (1)</u> plus any LAFCO fees	\$4,969 + <u>CPI (2)</u> plus any LAFCO fees
27	206-	Zoning Amendment Review	Application	\$3,114	\$3,768 + <u>CPI (1)</u>	\$4,422 + <u>CPI (2)</u>

EXHIBIT A

Service No	Account Number	Service Center	Unit	Current Fee	Proposed Fee July 6, 2004	Projected Fee July 1, 2005
	38185			\$1,087 if processed concurrently with General Plan Amendment or Annexation	\$1,087 + <u>CPI (1)</u> if processed concurrently with General Plan Amendment or Annexation	\$1,087 + <u>CPI (2)</u> if processed concurrently with General Plan Amendment or Annexation
28	206-38186	Zoning Text Amendment Review	Application	\$3,599	\$4,366 + <u>CPI (1)</u>	\$5,133 + <u>CPI (2)</u>
29	206-38123	Urban Service Area Amendment	Application	\$3,061/City initial process \$3,971/LAFCO	\$3,897 + <u>CPI (1)</u> /City initial process \$4,137 + <u>CPI (1)</u> /LAFCO	\$4,732 + <u>CPI (2)</u> /City initial process \$4,303 + <u>CPI (1)</u> /LAFCO
33	206-38183	Res. Planned Dev Review	Application	\$3,908 \$1,165 if processed concurrently with Tentative Subdivision or Parcel Map	\$4,316 + <u>CPI (1)</u> \$1,165 + <u>CPI (1)</u> if processed concurrently with Tentative Subdivision or Parcel Map	\$4,724 + <u>CPI (2)</u> \$1,165 + <u>CPI (2)</u> if processed concurrently with Tentative Subdivision or Parcel Map
35	206-38141	Preliminary Measure "P" Review	Application	\$2,663	\$3,279 + <u>CPI (1)</u>	\$3,895 + <u>CPI (2)</u>
35 A	206-38143	Micro Measure 'P' Admin Review	Application	\$2,425	\$3,673 + <u>CPI (1)</u>	\$4,920 + <u>CPI (2)</u>
35 B	206-38144	Micro Measure 'P' Non-Admin Review	Application	\$2,781	\$4,581 + <u>CPI (1)</u>	\$6,381 + <u>CPI (2)</u>
36	206-38142	Final Measure 'P' Review	Application	\$6,765	\$8,949 + <u>CPI (1)</u>	\$11,133 + <u>CPI (2)</u>
37	206-38111	Cultural Resource Designation Review	Application	\$2,281	\$2,928 + <u>CPI (1)</u>	\$3,575 + <u>CPI (2)</u>
38	206-38112	Cultural Resource Alteration	Application	\$2,330	\$2,953 + <u>CPI (1)</u>	\$3,576 + <u>CPI (2)</u>
39	206-38104	Process Appeal-Com Board Decision	Application	\$1,737	\$2,032 + <u>CPI (1)</u>	\$2,326 + <u>CPI (2)</u>
40	206-38105	Process Appeal-Staff	Application	\$1,032	\$1,671 + <u>CPI (1)</u>	\$2,309 + <u>CPI (2)</u>
41	206-38115	Development Agreement Review	Request	\$2,171 \$1,879 if processed concurrently with Tentative Subdivision or Parcel Map.	\$3,285 + <u>CPI (1)</u> \$3,097 + <u>CPI (1)</u> if processed concurrently with Tentative Subdivision or Parcel Map.	\$4,399 + <u>CPI (2)</u> \$4,315 + <u>CPI (2)</u> if processed concurrently with Tentative Subdivision or Parcel Map.
42 A	206-38740	Reimbursement Agreement	Application	\$982	\$1,231 + <u>CPI (1)</u>	\$1,480 + <u>CPI (2)</u>
43	206-38178	Williamson Act. Cancel. Review	Request	\$2,201	\$2,887 + <u>CPI (1)</u>	\$3,573 + <u>CPI (2)</u>
44	206-38187	Zoning Conf. Review	Request	\$337	\$595 + <u>CPI (1)</u>	\$853 + <u>CPI (2)</u>
46	206-38176	Exception to Loss of Building Allotment	Request	\$1,471	\$1,443 + <u>CPI (1)</u>	\$2,415 + <u>CPI (2)</u>

EXHIBIT A

Service No	Account Number	Service Center	Unit	Current Fee	Proposed Fee July 6, 2004	Projected Fee July 1, 2005
47	206-38108	C.C. & R. Review	Application	\$628 plus fully burdened hourly rate* for City Attorney review	\$1,050 + <u>CPI (1)</u> plus fully burdened hourly rate* for City Attorney review	\$1,472 + <u>CPI (2)</u> plus fully burdened hourly rate* for City Attorney review
49	206-38734	Eng. Plan Checking & Inspect.	Application	Fee Based on Estimated Construction costs. For est. constructions costs -up to \$100,000 = 11.7% -between \$100,001 and \$200,000 = 10.5% - between \$200,001 and \$500,000 = 9.1% - exceeding \$500,000 = 7.8%	Fee Based on Estimated Construction costs. For est. constructions costs -up to \$100,000 = 12.5% -between \$100,001 and \$200,000 = 11.2% - between \$200,001 and \$500,000 = 10.3% - exceeding \$500,000 = 8.3%	Fee Based on Estimated Construction costs. For est. constructions costs -up to \$100,000 = 13.3% -between \$100,001 and \$200,000 = 11.8% - between \$200,001 and \$500,000 = 10.3% - exceeding \$500,000 = 8.8%
50 A	206-38737	Easement Abandonment	Application	\$1,563	\$1,782 + <u>CPI (1)</u>	\$2,001 + <u>CPI (2)</u>
52	206-38430	Certificate of Compliance	Request	\$1,417	\$1,852 + <u>CPI (1)</u>	\$2,286 + <u>CPI (2)</u>
55	206-38703	Encroachment Rev. & Insp.	Permit	Utility: \$204 per permit plus fully burdened hourly rate* for inspection time in excess of one hour. Private: \$246 per permit plus fully burdened hourly rate*.	Utility: \$245 + <u>CPI (1)</u> per permit plus fully burdened hourly rate for inspection time in excess of one hour. Private: \$327 + <u>CPI (1)</u> per permit plus fully burdened hourly rate	Utility: \$286 + <u>CPI (2)</u> per permit plus fully burdened hourly rate for inspection time in excess of one hour. Private: \$408 + <u>CPI (2)</u> per permit plus fully burdened hourly rate
91	206-38723	Wide Load Review - PW	Application	\$63	\$105 + <u>CPI (1)</u>	\$147 + <u>CPI (2)</u>
92	206-38724	Wide Load Permit	Permit	\$124	\$136 + <u>CPI (1)</u>	\$148 + <u>CPI (2)</u>
93	206-38741	Reimbursement Agreement - PW	Application	\$982	\$1,231 + <u>CPI (1)</u>	\$1,480 + <u>CPI (2)</u>

- Burdened hourly rates described above are to be established by the City Manager at a rate that does not exceed the sum of the actual salary, employee benefit, and applicable overhead costs

CPI (1): Each fee, for which "CPI (1)" is referenced above, is to be adjusted automatically on July 1 of 2004, and on each subsequent July 1, by the change in the Consumer Price Index for Urban Wage Earners, for the year ended the previous April, under Resolution No. 5658 adopted on March 19, 2003.

CPI (2): Each fee, for which "CPI (2)" is referenced above, is to be adjusted automatically on July 1 of 2005, and on each subsequent July 1, by the change in the Consumer Price Index for Urban Wage Earners for the year ended the previous April, under Resolution No. 5658 adopted on March 19, 2003, and under the Resolution to which this Exhibit is attached.



CITY COUNCIL STAFF REPORT

MEETING DATE: MAY 5, 2004

CONDUCT HEARING AND CONSIDER ADOPTION OF RESOLUTION OF NECESSITY FOR PROPERTY ACQUISITION FOR PROPOSED TENNANT AVENUE WIDENING

RECOMMENDED ACTIONS:

- 1) Adopt attached Resolution of Necessity for a portion of property identified as APN 817-004-006 for the proposed Tennant Avenue Widening Project.
- 2) Approve the expenditure of \$82,750 for property identified as APN 817-004-006, plus escrow and closing costs for the acquisition of this property.

EXECUTIVE SUMMARY: The City's July 2001 General Plan references Tennant Avenue as a four-lane arterial. The west bound lane of Tennant Avenue, between Vineyard and Monterey requires widening in order to achieve this and thus is a safety and capacity issue if left in its current state. Staff has been working on acquiring the right-of-way for the Tennant Avenue Widening project since August 2002. Staff filed a Notice of Negative Determination in July 2002, which is in accordance with the City of Morgan Hill's procedures for compliance with the California Environmental Quality Act (CEQA). A real property appraisal was prepared by Hulberg & Associates, Inc. for this parcel, which is incorporated into this staff report by reference. Offer Letters were then sent to the property owner in September 2002 and a revised Offer Letter in May 2003, including follow up communications by the City's right-of-way consultants and outside council.

The owner of interest in this property has been notified of this hearing and their right to appear and be heard regarding items 1, 2, 3, and 5 in the findings of the attached resolution.

The City will be depositing with the State Condemnation Deposit Fund in Sacramento the amount of \$82,750 which represents the total appraised value of the parcel. The attached Resolution of Necessity must be adopted by a two-third Council majority.

The City's goal is to begin construction of this project by February 2005. The plans and specification for this project are almost complete and the project is scheduled to go out to bid in December 2004. Depending on the weather, the construction of the project will take approximately four months to complete. Based on this schedule, Staff anticipates completion by June 2005. In addition, a relocation consultant has been retained to assist Staff in providing any required relocation assistance and/or benefits to occupants of the property who are entitled to such as a consequence of being displaced by this project.

By adoption of the attached resolution, Council is directing the City Attorney to institute and conduct, in regard to the stated properties, the conclusion actions of eminent domain for the acquisition of the estate and interest necessary to widen Tennant Avenue.

FISCAL IMPACT: This project is fully funded in the CIP FY 2001-2004 budget with a total appropriation of \$1,500,000.

Agenda Item # 13

Prepared By:

Associate Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS

(Tennant Avenue Widening Project)

WHEREAS, it is desirable and necessary for the City of Morgan Hill (hereinafter the “City”) to acquire certain real property, more particularly described in Exhibit A, including a Temporary Demolition Easement, attached hereto and incorporated herein by this reference, for the Tennant Avenue Widening Project (hereinafter referred to as the “Project”); and

WHEREAS, the City is vested with the power of eminent domain to acquire real property by virtue of Article I, Section 19 of the Constitution of the State of California, Section 37350.5 of the California Government Code, Section 4090 of the Street and Highways Code, and Section 1240.010 of the California Code of Civil Procedure; and

WHEREAS, pursuant to the provisions of Section 1245.235 of the California Code of civil Procedure, notice has been duly given to Rose Hernandez, Rita Dakiwag, Caroline Gosé, Maurice Borquez, whose property is to be acquired by eminent domain and whose names and addresses appear on the Santa Clara County Equalized Assessment Roll, and the property owners have been given a reasonable opportunity to appear and be heard before the City Council; and

WHEREAS, pursuant to the provisions of Section 7267.2 of the California Government Code, the City has made an offer to the owners of record to acquire the subject property for the amount which it has established to be just compensation therefore.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND AND DETERMINE AS FOLLOWS;

SECTION 1: The public interest and necessity require the Project.

SECTION 2: The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

SECTION 3: The taking of the real property and the Temporary Demolition Easement, more particularly described in Exhibit A is necessary for the Project.

SECTION 4: All environmental review required by law has been prepared and adopted.

SECTION 5: The offer required by Section 7267.2 of the California Government Code has been made to the owners of record of the real property.

SECTION 6: The City’s attorney or her duly authorized designee is hereby authorized and directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the

estates and interests aforesaid and to take such actions as he or she may deem advisable or necessary in connection therewith.

SECTION 7: The City may deposit with the State Treasury the probable amount of compensation and obtain an order for prejudgment possession of the subject property.

PASSED AND ADOPTED this 5th day of May, 2005.

AYES:

NOES:

ABSENT:

ABSTAIN:

CERTIFICATION

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____ adopted by the City Council at the Regular City Council Meeting of May 5, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: MAY 5, 2004

APPROVAL OF RIGHT-OF-WAY PURCHASE AGREEMENTS FOR TENNANT AVENUE WIDENING (APN: 817-04-002 & 817-04-008)

RECOMMENDED ACTION: Approve purchase and authorize City Manager to execute purchase agreements, subject to approval as to form by City Attorney, with the owners of APN 817-04-002 and APN 817-04-008 for total compensation of \$95,000 and \$168,767 respectively, plus escrow and closing costs for the acquisition of portions of these properties.

EXECUTIVE SUMMARY: As Council is aware, staff has been working on acquiring right-of-way for the widening of Tennant Avenue since August 2002. There are a total of seven properties which needed to be acquired prior to construction. Thus far, agreements have been reached for six properties. The City has recently reached agreements with the owners of APN 817-04-002 and APN 817-04-008 for portions of property including settlement damages associated with the demolition or relocation of existing structures (see Exhibit A for summary of costs, Exhibit B for acquisition areas, and Exhibit C for vicinity map).

Three of the seven properties required for road widening have rental units which will require relocation or demolition due to their proximity to the new road width. As expected, the acquisition of right-of-way for these properties has been more complex and has consequently taken additional time to negotiate fair settlements. At this time, Staff has successfully completed negotiations with all but one property owner.

The plans and specifications for this project are currently on hold until all of the acquisitions are finalized. It is anticipated that completion of the plans and specifications will only take a few months. It remains a Staff goal to begin construction as early as possible, contingent upon acquiring right-of-way. It is anticipated that the completion of Tennant widening Avenue will now be during June 2005.

FISCAL IMPACT: This project is fully funded in the CIP FY 2001-2004 budget with a total appropriation of \$1,500,000.

Agenda Item # 14

Prepared By:

Associate Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

EXHIBIT A				
PROPERTY APN #	PROPERTY OWNER	PURCHASE AMOUNT	ESCROW & TITLE INSURANCE COSTS	TOTAL
817-04-002	ROBERT & TERESITA CARRASCO	\$ 95,000	\$3,000	\$98,000
817-04-008	MARKO & KLARA GERA	\$168,767	\$3,000	\$171,767



REDEVELOPMENT AGENCY/CITY COUNCIL STAFF REPORT

MEETING DATE: May 5, 2004

Agenda Item # 15

Approved By:

BAHS Director

Submitted By:

Executive Director

WORKPLAN FOR THE DOWNTOWN PLAN

RECOMMENDED ACTION(S): 1) Accept the workplan for the downtown plan and 2) direct staff to schedule future Council workshops to discuss the recommendations and findings of the traffic study regarding Monterey Road and the Parking Management Plan.

EXECUTIVE SUMMARY: Last year the City Council conceptually approved the update to the Downtown Plan. The updated Downtown Plan (Plan) provides a comprehensive vision to revitalize the downtown area into a more pedestrian friendly destination district within our community. The Plan updated the previously approved 1980 plan regarding land use, circulation, urban design, parking, public improvements and development assistance. Contained within the Plan is an Implementation Strategy (Strategy) which prioritizes the public sector tasks/activities to focus on to encourage the private sector investment. The Strategy is to serve as a “road map” for the next five to ten years (see attached).

The attached workplan describes the specific actions for each Implementation Strategy task and provides information regarding time lines and rough cost estimates. It should be noted that project costs can vary widely depending on the specific design elements that are selected. The costs provided are “order of magnitude” estimates to allow the Council to compare the cost of the various tasks. Although the Plan did not identify specific funding for the various implementation tasks, the workplan does indicate which actions are currently funded or underway. Staff took the initiative to undertake those planning and special studies deemed essential to encourage private investment in the downtown or needed before a top priority public improvement could be considered. Specifically, the workplan funds the Parking Management Plan, the traffic study for Monterey Road, and a public signage program for the downtown. An amount has also been budgeted to design/engineer and install temporary improvements for Monterey Road. However, the improvements could not be installed until the appropriate CEQA analysis has been completed. The 5 yr CIP also includes funding for the flood control improvements and Llagas Creek landscaping and bicycle paths. All the other public improvements identified in the Downtown Plan are currently unfunded.

For those public improvement tasks which are currently unfunded, the workplan identifies other possible sources for the Council to consider in the future such as the \$2M in non-housing monies available under the Downtown Request for Concepts (RFC) process. The major challenges facing the Council will be to reevaluate the priorities listed in the Plan, determine which public improvements should be funded, and where the funding would come from. The workshops to discuss the findings and recommendations from the various downtown studies will provide the Council the time and information to make better informed decisions regarding the public improvements in the downtown area. It should also be noted that the workplan is a work in progress and that it can be modified to reflect the direction received from those workshop discussions.

FISCAL IMPACT: Over the next 3 yrs, \$5.35M has been budgeted to implement this workplan. We estimate that an additional \$2.2M to \$3.1M will be needed to fully implement the unfunded portions of the workplan.

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CITY COUNCIL STAFF REPORT

MEETING DATE: May 5, 2004

Agenda Item # 16

Prepared By:

**Manager, Recreation &
Community Services**

Submitted By:

City Manager

STATUS OF REGIONAL SOCCER COMPLEX PROJECT

RECOMMENDED ACTION(S): Council Discretion.

EXECUTIVE SUMMARY:

In July 2000, the Morgan Hill Unified School District proposed construction of a new high school on land located within the City of San Jose's Coyote Greenbelt. A lawsuit followed with the resulting agreement that the school would be built on the Morgan Hill side of the property with school play fields and a proposed soccer park be built on the San Jose greenbelt side (known as Sobrato site).

The California Youth Soccer Association (CYSA) currently operates on the Condit soccer complex in Morgan Hill. CYSA will be relocated to the Sobrato site. The proposal is to enter into a joint-use agreement with the City of San Jose, which includes dedicating 3 of the proposed soccer fields to City use. Operations and maintenance of the facility would be by the non-profit entity, District II Field Committee through CYSA.

The City of San Jose has identified \$300,000 in initial funding for this project to be used for the environmental document (EIR). The City of Morgan Hill has reserved \$1m for the project to assist CYSA in their move from the current site. Meanwhile, a lease with CYSA for use of the Condit site through December 2004 have been approved by the Morgan Hill City Council on April 7, 2004.

Representatives from the City of San Jose, City of Morgan Hill and CYSA have met to discuss the timeline and assignments (attachment A). To facilitate the EIR process, the City of Morgan Hill has entered into an agreement with Beals Alliance, Inc. Sport Division to provide a site plan, construction time-line and cost estimate that would be sufficient for the environmental document. This work will begin in May (see attachment B). The City of San Jose is working on receiving proposals from consulting firms to perform the EIR work.

Staff has been notified that the Council sub-committee consisting of Council members Chang and Sellers will now be working on this project and they will be notified of all meetings and work assignments.

FISCAL IMPACT: \$1million was initially budgeted through CIP #114000. To date, apx. \$10,000 has been spent in FY 03/04 and the current Beals agreement for an additional amount of \$11,000 for a total expenditure of \$21,000.